A **SISTEM LINGKARAN LEBUHRAYA KAJANG SDN BHD**

v.

INCH KENNETH KAJANG RUBBER LTD & ANOR & OTHER APPEALS

B

COURT OF APPEAL, PUTRAJAYA
KN SEGARA JCA
RAMLY ALI JCA
AZHAR MA'AH JCA
C [CIVIL APPEAL NOS: B-01(IM)-146-09,
B-01(IM)-245-09 & B-01(IM)-83-10]
1 SEPTEMBER 2010

D ***CIVIL PROCEDURE:*** *Parties - Intervention - Application to intervene in land reference proceedings - Whether intervener had direct interest in subject matter of action - Land acquired to build highway - SILK given concession to build highway - Whether SILK had direct legal interest in compensation payable to land owner under acquisition - Failure by SILK to make objections in Form N - Whether SILK a "person interested"*
E *within meaning of Land Acquisition Act 1960 - Whether attempt to intervene circumvented provisions of Land Acquisition Act 1960 - Whether abuse of process - Whether leave to intervene ought to be given - Rules of the High Court 1980, O. 15 r. 6(2)(b)*

F ***LAND LAW:*** *Acquisition of land - Compensation - Award by Land Administrator - Land acquired for building of highway - Application by concession holder (SILK) to intervene in land reference proceedings - Whether SILK had direct legal interest in compensation payable to land owner under acquisition - Failure by SILK to make objections in Form N*
G *- Whether SILK a "person interested" within meaning of Land Acquisition Act 1960 - Whether attempt to intervene circumvented provisions of Land Acquisition Act 1960 - Whether abuse of process - Requirement of strict compliance with provisions of Land Acquisition Act 1960 - Whether leave to intervene ought to be given - Rules of the High Court 1980, O. 15 r. 6(2)(b)*
H

WORDS AND PHRASES: *"proceedings" - Meaning of - Land Acquisition Act 1960 s. 37, Third Schedule*

I The three appeals herein resulted from the appellant's three identical applications to intervene and be made a co-respondent in the respective three land reference cases at the High Court. The appellant was the concessionaire appointed by the Government to

undertake the construction of the SILK Highway pursuant to a privatisation agreement. *Vide* Selangor State Government Gazette, the "scheduled lands" were acquired for the SILK Highway under the s. 3 of the Land Acquisition Act 1960 ('LAA 1960') on behalf of Lembaga Lebuhraya Malaysia ('LLM'). The lands which were acquired were now vested in the name of LLM. SILK was not disputing the award made by the Land Administrator and had not filed any objection in Form N with the Land Administrator with regard to the quantum of compensation awarded to the persons interested in the scheduled lands. SILK also did not evince any interest or attempt to participate at the enquiry under s. 12 LAA 1960. SILK's admitted intention in wanting to intervene was to defend the award of compensation by the Land Administrator and not to oppose it.

Held (dismissing the three appeals with costs)
Per KN Segara JCA:

(1) The LAA1960 is a special Act relating to the acquisition of land. In view of it being a special Act, the statutory provisions therein must be strictly adhered to and made applicable to all relevant parties. All procedural steps leading for a final determination of any award shall be in accordance with the provisions of LAA 1960. (para 4)

(2) Based on the factual matrix relating to SILK's application, SILK did not fall within that category of person envisaged in O. 15 r. 6(2)(b)(i) of the Rules of the High Court 1980 ('RHC 1980'). There were no 'matters in dispute' that may be 'effectively and completely determined and adjudicated upon' which necessitated SILK to be a party in the proceedings at the High Court. (para 5)

(3) Under the Third Schedule LAA 1960, "proceeding" means a proceeding in respect of an objection under s. 37. The High Court judge was correct in dismissing SILK's applications on the ground the application for leave to intervene was without merits. SILK's liability to pay the compensation arose out of the privatisation agreement and not under the LAA 1960 either upon the assessment by the Land Administrator at the conclusion of the enquiry under s. 12 or at the conclusion of any proceeding in respect of an objection under s. 37 in court, by a determination under s. 47 LAA 1960. (para 6)

(4) SILK was neither making any claim to compensation nor was entitled to any compensation under the Act. SILK had also not made any objection in Form N. In the circumstances, SILK's application to intervene, made more than four years after the Land Administrator had referred to court the land owners' objection to the award of compensation was entirely bereft of any merits. (paras 13-15)

(5) In the over-all scheme and context of the LAA 1960, any application by the appellant under O.15 r. 6(2)(b) RHC 1980 to be made a party, was inappropriate. It amounted to an abuse of the process of the court and an attempt to circumvent the clear and unambiguous provisions of the LAA 1960 as regards to the manner and circumstances in which "persons interested" under the LAA 1960 are to participate in proceedings either before the Land Administrator at an enquiry or, in Court. Filing of Form N is the most appropriate and the only mode available under the LAA 1960 to any person interested under the LAA 1960 to become a party in a land reference at the High Court relating to an objection to the amount of compensation. (para 16)

Bahasa Malaysia *Translation Of Headnotes*

Ketiga-tiga rayuan di sini adalah hasil dari tiga permohonan yang sama perayu untuk mencelah dan dijadikan responden bersama dalam tiga kes rujukan tanah masing-masing dalam Mahkamah Tinggi. Perayu adalah pemegang konsesi yang dilantik oleh Kerajaan untuk mengusahakan pembinaan Lebuhraya SILK mengikut suatu perjanjian penswastaan. Melalui Warta Kerajaan Negeri Selangor, "tanah yang dijadualkan" telah diambil untuk Lebuhraya SILK di bawah s. 3 Akta Pengambilan Tanah 1960 ('APT 1960') bagi pihak Lembaga Lebuhraya Malaysia ('LLM'). Tanah-tanah yang diambil kini terletakhak atas nama LLM. SILK tidak mempertikaikan award yang dibuat oleh Pentadbir Tanah dan tidak memfailkan apa-apa bantahan di dalam Borang N dengan Pentadbir Tanah mengenai kuantum pampasan yang diawardkan kepada orang yang berkepentingan dalam tanah-tanah yang dijadualkan. SILK juga tidak menunjukkan apa-apa minat atau percubaan untuk menyertai siasatan di bawah s. 12 APT 1960. SILK mengakui bahawa niatnya bagi mencelah adalah untuk mempertahankan award pampasan yang dibuat oleh Pentadbir Tanah dan bukan untuk menentangnya.

Diputuskan (menolak ketiga-tiga rayuan dengan kos)
Oleh KN Segara HMR:

(1) APT 1960 adalah suatu Akta khas yang berhubungan dengan pengambilan tanah. Memandangkan ia adalah Akta khas, peruntukan-peruntukan statutori dalamnya mesti dipatuhi dengan ketat dan digunapakai terhadap semua pihak-pihak yang relevan. Semua langkah prosedural yang membawa kepada penentuan muktamad mana-mana award mesti berpatuhan dengan peruntukan-peruntukan APT 1960.

(2) Berdasarkan matriks fakta yang berkaitan dengan permohonan SILK, SILK tidak termasuk dalam kategori orang yang dibayangkan di dalam A. 15 k. 6(2)(b)(i) Kaedah-Kaedah Mahkamah Tinggi 1980 ('KMT 1980'). Tidak ada 'perkara-perkara yang dipertikaikan' yang mungkin 'ditentukan dan dihakimi dengan efektif dan sepenuhnya' yang memerlukan SILK menjadi suatu pihak dalam prosiding di Mahkamah Tinggi.

(3) Di bawah Jadual Ketiga APT 1960, "prosiding" bermaksud sesuatu prosiding berhubungan dengan satu bantahan di bawah s. 37. Hakim Mahkamah Tinggi bertindak betul apabila menolak permohonan-permohonan SILK atas alasan permohonan bagi kebenaran untuk mencelah tidak mempunyai merit. Liabiliti SILK untuk membayar pampasan timbul dari perjanjian penswastaan dan bukan di bawah APT 1960 sama ada di bawah taksiran oleh Pentadbir Tanah pada kesudahan siasatan di bawah s. 12 ataupun pada kesudahan apa-apa prosiding berhubungan dengan suatu bantahan di bawah s. 37 dalam mahkamah, melalui penentuan di bawah s. 47 APT 1960.

(4) SILK tidak membuat apa-apa tuntutan bagi pampasan dan juga tidak berhak mendapat apa-apa pampasan di bawah Akta. SILK juga tidak membuat apa-apa bantahan di dalam Borang N. Dalam keadaan sebegitu, permohonan SILK untuk mencelah, yang dibuat lebih dari empat tahun selepas Pentadbir Tanah telah merujuk ke mahkamah bantahan pemilik-pemilik tanah terhadap award pampasan langsung tidak mempunyai merit.

(5) Dalam rancangan dan konteks keseluruhan APT 1960, apa-apa permohonan oleh perayu di bawah A. 15 k. 6(2)(b) KMT 1980 untuk dijadikan suatu pihak, adalah tidak berpatutan. Ia berjumlah kepada suatu penyalahgunaan proses mahkamah dan suatu percubaan untuk memintas peruntukan-peruntukan jelas

dan nyata APT 1960 berkaitan dengan cara dan keadaan di mana "orang berkepentingan" di bawah APT 1960 harus menyertai prosiding sama ada di depan Pentadbir Tanah di suatu siasatan atau, di mahkamah. Pemfailan Borang N adalah cara paling berpatutan dan cara tunggal di bawah APT 1960 bagi seseorang berkepentingan di bawah APT 1960 untuk menjadi suatu pihak dalam sesuatu rujukan tanah di Mahkamah Tinggi berhubungan dengan bantahan terhadap amaun pampasan.

Case(s) referred to:

Lembaga Lebuhraya Malaysia v. Cahaya Baru Development Bhd [2010] 4 CLJ 419 CA

Singapore Para Rubber Estate Ltd v. Pentadbir Tanah Daerah Rembau, Negeri Sembilan [2009] 1 CLJ 13 FC

Sistem Penyuraian Trafik KL Barat Sdn Bhd v. Kenny Heights Development Sdn Bhd & Anor [2009] 4 CLJ 57 CA

Legislation referred to:

Land Acquisition Act 1960, ss. 3, 12, 14, 16, 37(1), 38(1), (3)(a), (b), (4), 45(2), 47

Rules of the High Court 1980, O. 15 r. 6(2)(b)(i)

(Civil Appeal No: B-01(IM)-146-09)
For the appellant - Wong Kian Kheong; M/s Wong Kian Kheong
For the respondents - G Rajasingam (Jason Lai with him); M/s Shearn Delamore & Co

(Civil Appeal No: B-01(IM)-245-09)
For the appellant - Wong Kian Kheong; M/s Wong Kian Kheong
For the respondents - Yong Soon Ching; M/s SC Yong & Assoc

(Civil Appeal No: B-01(IM)-83-10)
For the appellant - Wong Kian Kheong; M/s Wong Kian Kheong
For the respondents - Collin Sequerah (Dennis Khong with him); M/s Zain & Co

Reported by Amutha Suppayah

JUDGMENT

KN Segara JCA:

[1] All three appeals were heard together before us, as the issue in all the three appeals centered on the application by the appellant

made by three identical summons in chambers to intervene and be made a co-respondent in the respective three Land Reference cases at the High Court, Shah Alam.

[2] The proposed intervener in the three Land Reference cases is Sistem Lingkaran Lebuhraya Kajang Sdn Bhd ("SILK"). It is the concessionaire appointed by the Government of Malaysia to undertake the construction of Lebuhraya Penyuaraian Trafik Jalan Lingkaran Kajang ("SILK Highway") pursuant to a Privatisation Agreement dated 8 October 1997 and Supplementary Privatisation Agreement dated 1 August 2001.

[3] *Vide* Selangor State Government Gazette No 1862 dated 24 October 2002 the "scheduled lands" were acquired under the Land Acquisition Act 1960 ('LAA 1960') for the SILK Highway. Lembaga Lebuhraya Malaysia (LLM) is the corporation or body on whose behalf the acquisition proceedings under s. 3 LAA 1960 was undertaken by the State Authority. There is no dispute that the lands which were acquired for the Highway are now owned and vested in the name of LLM.

[4] The LAA 1960 is a special Act relating to the acquisition of land, the procedure for the assessment of compensation to be made on account of such acquisition and all matters incidental thereto, including the manner, procedure, and circumstances upon which any dissatisfied party to an award of compensation may pursue legal redress in court. In view of it being a special Act we are unanimous that the statutory provisions therein must be strictly adhered to and made applicable to all relevant parties. All procedural steps leading for a final determination of any award shall be in accordance with the provisions of LAA 1960. This is clearly recognized in respect of all proceedings in court, as can be seen from s. 45(2) LAA 1960 which reads:

> (2) **Save in so far as they may be inconsistent with anything contained in this Act,** the law for the time being in force relating to civil procedure shall apply to all proceedings before the Court under this Act. (emphasis added)

[5] At the very outset we wish to express our unanimous view, based on the factual matrix relating to SILK's application in the summons in chambers, that O. 15 r. 6(2)(b)(i) Rules of the High Court 1980 (RHC 1980) cannot be invoked because it refers to a situation where "any person who ought to have been joined as a party or whose presence before the court is necessary to ensure that

A all matters in dispute in the cause or matter may be effectively and completely determined and adjudicated upon". SILK most certainly does not fall within that category of person envisaged in O. 15 r. 6(2)(b)(i) RHC 1980. The following pertinent facts require emphasis:

B

1) SILK is not disputing the award made by the Land Administrator;

2) SILK did not file any objection in Form N with the Land Administrator under the provisions of the LAA 1960 with regard
C to the quantum of compensation awarded to the persons interested in the scheduled lands;

3) SILK has not prayed in the summons in chambers, for leave under the provisions of the LAA 1960, to file Form N with the
D Land Administrator out of time;

4) SILK did not evince any interest or attempt to participate at the enquiry under s. 12 LAA 1960;

5) SILK's admitted intention in wanting to intervene is to defend
E the award of compensation by the Land Administrator and not to oppose the award of compensation made by the Land Administrator.

[6] In the above circumstances, what are the 'matters in dispute'
F that may be 'effectively and completely determined and adjudicated upon' which necessitates SILK to be a party in the proceedings at the High Court? The answer, looked at objectively, must be "NONE". Incidentally, under the Third Schedule LAA 1960, "proceeding" means a proceeding in respect of an objection under
G s. 37. We are, therefore, unanimous that the High Court judge was correct in dismissing SILK's summons in chambers on the ground the application for leave to intervene was without merits.

[7] The LAA 1960 is a complete and comprehensive Act on the
H substantive law, procedure and forms. It ensures that no person would be deprived of his constitutional right to adequate and fair compensation without a proper inquiry, when deprived by the State of his property.

I **[8]** The respective owners of the scheduled land that was acquired for the SILK Highway were awarded in Form G under s. 14 LAA 1960 compensation by the Land Administrator, upon the conclusion of the enquiry under s. 12 LAA 1960.

12 Enquiry by the Land Administrator

(1) On the date appointed under section 10(1) the Land Administrator shall make full enquiry into the value of all scheduled lands and **shall** as soon as possible thereafter **assess** the amount of compensation which in his opinion is appropriate in each case, **according to** the consideration set out in **the First Schedule**;

Provided the Land Administrator **may obtain a written opinion** on the value of all scheduled lands **from a valuer** prior to making an award under section 14.

(2) The Land Administrator **shall also enquire** into the **respective interests** of all persons **claiming compensation** or who in **his opinion are entitled to compensation** in respect of the scheduled land and into the objections, if any, made by any interested person to the area of any scheduled land.

(3) The Land Administrator may for sufficient cause to be recorded by him in writing postpone any enquiry or adjourn any hearing of an enquiry from time to time. (emphasis added)

[9] SILK did not appear at the enquiry or request to be heard at the enquiry before the Land Administrator under s. 12 of the LAA 1960, at any time prior to the making of an award by the Land Administrator under s. 14. In any event, SILK's liability to pay the compensation arises out of the Privatization Agreement, and not under the LAA 1960 either upon the assessment by the Land Administrator at the conclusion of the enquiry under s. 12, or, at the conclusion of any proceeding in respect of an objection under s. 37 in court, by a determination under s. 47 LAA 1960.

[10] It would become immediately obvious, upon reading s. 12 carefully, and upon a further consideration of all the other provisions of the LAA 1960, that the primary concern of the LAA 1960 is to meet the interest of all the persons claiming compensation or are entitled to compensation (under the Act) for any scheduled land. It is further concerned only with the claims of any person interested in any scheduled land making objection to:

a) the measurement of the land;

b) the amount of the compensation;

c) the persons to whom it is payable;

d) the apportionment of the compensation.

(see s. 37(1) LAA 1960)

[11] Any objection made under s. 37 shall be made by a written application in Form N to the Land Administrator requiring that he refer the matter to the Court for its determination (see s. 38(1)).

[12] Every application under s. 38(1) shall be made within six weeks from the date of the Land Administrator's award under s. 14 or within six weeks of the receipt of the notice from the Land Administrator under s. 16 (see s. 38(3)(a) and (b)). The prescribed period under subsection (3)(a) and subsection (3)(b) shall not be capable of enlargement by any court except in special circumstances. However, this discretion to enlarge time under s. 38(4) is not absolute and unqualified. It has to be exercised sparingly. (see s. 38(3) and (4); see also *Singapore Para Rubber Estate Ltd v. Pentadbir Tanah Daerah Rembau, Negeri Sembilan* [2009] 1 CLJ 13).

[13] It is significant to note that SILK is neither making any claim to compensation nor is entitled to any compensation under the Act.

[14] SILK has also not made any objection in Form N to date *vide*:

a) the measurement of the land;

b) the amount of the compensation;

c) the persons to whom it is payable;

d) the apportionment of the compensation.

[15] In the above circumstances, SILK's application, by way of the summons in chambers to intervene, made more than four years after the Land Administrator had referred to court the land owners' objection to the award of compensation is entirely bereft of any merits.

[16] In the over-all scheme and context of the Land Acquisition Act, any application by the appellant under O. 15 r. 6(2)(b) RHC 1980 to be made a party, is inappropriate. It would amount to an abuse of the process of the court and an attempt to circumvent the clear and unambiguous provisions of the LAA 1960 as regards to the manner and circumstances in which "persons interested" under the LAA 1960 are to participate in proceedings either before the Land Administrator at an enquiry or, in court, upon a reference by

the Land Administrator upon any objection to an Award. Filing of Form N is the most appropriate and the only mode available under the LAA 1960 to any person interested under the LAA 1960 to become a party in a Land Reference at the High Court relating to an objection to the amount of compensation.

[17] The Land Reference proceedings in this case before the High Court is essentially an enquiry to determine the fair compensation payable to the owner of the land who is dissatisfied with the Award of the Land Administrator as being low. Every opportunity was available to the appellant to have participated in the enquiry before the Land Administrator if it had asserted its rights to do so as being the eventual paymaster of any compensation awarded to the land owner. It is for the Land Administrator and/or his valuer, to file his valuation report at the Land Reference proceedings in the High Court pursuant to the 3rd Schedule to support his Award. It is neither open nor desirable for the appellant to file any valuation report to support the Award of the Land Administrator in the High Court. However, if the appellant had filed any valuation report in any enquiry before the Land Administrator the report would form part of the records before the High Court. Land Reference proceedings should not be protracted and delayed in the High Court by unnecessary interlocutory proceedings such as the present application by the appellant to intervene. Land Reference cases should be expeditiously disposed off in the High Court by strictly adhering to the evidence and procedure set out in the Third Schedule. *Sistem Penyuraian Trafik KL Barat Sdn Bhd v. Kenny Heights Development Sdn Bhd & Anor* [2009] 4 CLJ 57 and *Lembaga Lebuhraya Malaysia v. Cahaya Baru Development Bhd* [2010] 4 CLJ 419 can be easily distinguished on the facts *vide* to the present appellant's application in the High Court.

[18] We have no hesitation in dismissing these three appeals with costs fixed at RM10,000 to the 1st respondent in each of the appeals. Deposit to be paid out to each of the 1st respondent to account of costs.